

NORTH CAROLINA LAW REVIEW

Volume 46 | Number 4

Article 1

6-1-1968

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Recommended Citation

Thomas W. Steed Jr., *The North Carolina Court of Appeals -- An Outline of Appellate Procedure*, 46 N.C. L. REV. 705 (1968).Available at: <http://scholarship.law.unc.edu/nclr/vol46/iss4/1>

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THE NORTH CAROLINA COURT OF APPEALS—AN OUTLINE OF APPELLATE PROCEDURE

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The North Carolina Court of Appeals, established by the General Assembly only last year, is now the appellate court to which a vast majority of all appeals formerly going to the supreme court must be directed. Although it is certainly hoped that all members of the North Carolina Bar are aware of this fact, it is very likely that the average attorney has not taken the opportunity to fully study the ramifications of the court of appeals and the change it may bring about in appellate procedure unless he has been confronted with an actual case requiring appeal to that court. Sooner or later, however, any attorney who is involved in appellate practice must become thoroughly familiar with the operation of the court and its rules of practice and procedure. Associate Justice Susie Sharp of the North Carolina Supreme Court, in remarking on the fact that attorneys were apparently not aware of changes in supreme court rules almost two years after the change, commented: "Surely it is now about time that the word got around!" This outline is not intended to be a scholarly treatise or study of appellate procedure. Rather, it is simply to help get the word around about the new rules of the court of appeals and to aid attorneys in their own study of the changes that might be necessary in their appellate procedures.

I. ORIGIN AND SOURCE

A. Constitutional Provisions

It is necessary to look to the provisions of the Constitution of North Carolina to find the origin of the court of appeals, the place it holds in the judicial system, and the basis for its jurisdiction and rules of practice and procedure.

Article IV of the constitution, as rewritten in 1962,¹ provides

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¹ N.C. CONST. art. IV was rewritten by the 1961 General Assembly in ch. 313 [1961] N.C. Sess. L. 436 which was adopted in the general election held on November 6, 1962.

for a unified judicial system consisting of one court, the General Court of Justice, which will operate through three "divisions"—an appellate division, the superior court division, and the district court division.² Under the 1962 amendment the appellate division consisted of the supreme court.³ In 1965 article IV was further amended to add to the appellate division "an intermediate Court of Appeals" when established by the General Assembly.⁴

Section 10 of article IV of the constitution provides for the jurisdiction of the several divisions of the General Court of Justice. The supreme court is vested with "jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference."⁵ This is identical to the jurisdiction of the supreme court under article IV prior to the 1962 revision.⁶ The court of appeals is vested with "such appellate jurisdiction as the General Assembly may provide."⁷ The difference in the jurisdiction of the two courts in the appellate division is significant. The bringing forward in the constitution of the specific jurisdiction of the supreme court as it existed prior to 1962 assures that the supreme court will retain its position as the highest appellate court in the state,⁸ and that the General Assembly is without power to change or diminish the scope of its jurisdiction. A second result of this distinction is that the jurisdiction of the supreme court is limited to the review of decisions of the "courts below," which phrase, as interpreted by the supreme court itself, limits its appellate jurisdiction to the review of judgments from courts making up the General Court of Justice and does not grant jurisdiction to review on direct appeal the decisions of administrative agencies.⁹ The court of appeals, on

² N.C. CONST. art. IV, § 2.

³ N.C. CONST. art. IV, § 5.

⁴ N.C. CONST. art. IV, § 5. This provision was amended by the 1965 General Assembly in ch. 877 [1965] N.C. Sess. L. 1173 which was adopted in the general election held on November 2, 1965.

⁵ N.C. CONST. art. IV, § 10(1).

⁶ N.C. CONST. art. IV, § 8 (1875).

⁷ N.C. CONST. art. IV, § 10(2).

⁸ The question could be raised as to whether the court of appeals is one of the "courts below" the supreme court as contemplated by N.C. CONST. art. IV, § 10(1), since both courts constitute the appellate division of the General Court of Justice. That the court of appeals is an "inferior" court for this purpose would seem to be indicated by the use of the word "intermediate" in section 5.

⁹ State *ex rel.* North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

the other hand, is not so restricted, and apparently the only limitation upon the General Assembly in prescribing the jurisdiction of this court is that it must exercise "appellate jurisdiction."¹⁰

One of the most significant provisions in the constitution from the standpoint of appellate procedures before the supreme court and court of appeals is section 11(2) of article 4 of the constitution. This section specifically provides that the supreme court shall have the *exclusive* authority to make rules of procedure and practice for the appellate division. Authority to make rules of procedure and practice for the superior court and district court divisions is vested in the General Assembly which has the right to delegate this authority to the supreme court with the proviso that the General Assembly will always retain the right to alter, amend or repeal any rule promulgated by that court.

B. Statutory Provisions

The general statutory implementation of the 1962 revision of article IV of the constitution is found in the "Judicial Department Act of 1965" which is codified as chapter 7A of the North Carolina General Statutes.¹¹ In order to get an overall picture of the new court structure it is extremely helpful to examine the index to chapter 7A¹² and read the sections appearing at the beginning of the chapter setting forth its purpose and the organization of the General Court of Justice.¹³

Subchapter II of chapter 7A contains the statutory sections which pertain to the appellate division of the General Court of Justice.¹⁴ Following the 1965 amendment to article IV of the constitution, this subchapter was rewritten by the 1967 General Assembly to provide for the organization of the court of appeals and to set forth the system of appeals and jurisdiction of that court and the supreme court.¹⁵

¹⁰ As to whether review of the decision of administrative agencies is an exercise of "appellate jurisdiction," see Hanft, *Administrative Law, Survey of North Carolina Case Law*, 44 N.C.L. REV. 889, 890 (1966).

¹¹ N.C. GEN. STAT. § 7A-1 to -401 (Supp. 1967).

¹² This index now appears at page 82 of the 1967 Cumulative Supplement to Vol. 1B of the General Statutes.

¹³ N.C. GEN. STAT. § 7A-1 to -4 (Supp. 1967).

¹⁴ N.C. GEN. STAT. § 7A-5 to -39.11 (Supp. 1967).

¹⁵ Ch. 108 [1967] N.C. Sess. L. rewrote chapter 7A, subchapter II, of the North Carolina General Statutes in its entirety.

1. Jurisdiction and System of Appeals.

The appellate jurisdiction and system of appeals of the supreme court and court of appeals is set forth in article 5 of chapter 7A. Although matters of jurisdiction will be discussed in relation to each type of lower court or trial tribunal in subsequent parts of this outline, the general scheme of jurisdiction can be summarized as follows:

All appeals made to the appellate division from any lower court or administrative agency are filed with the *court of appeals* with the one exception that an appeal from a judgment of a superior court which includes a sentence of death or life imprisonment is made directly to the supreme court.¹⁶

Appeal lies *as a matter of right* to the court of appeals from:

(a) Any final judgment of a superior court other than a judgment including a sentence of death or life imprisonment or a judgment entered in a post-conviction hearing.¹⁷

(b) Any final judgment of a district court in a civil case¹⁸ or in a case involving juveniles within the coverage of article 2 of chapter 110 of the General Statutes.¹⁹

(c) Any final order or decision of the North Carolina Utilities Commission or North Carolina Industrial Commission.²⁰

(d) Any interlocutory order of a superior court or district court in a civil action which (i) affects a substantial right, or (ii) in effect determines the action and prevents a judgment from which appeal might be taken, or (iii) discontinues the action, or (iv) grants or refuses a new trial.²¹

Appeal lies *as a matter of right* to the supreme court from:

(a) Any judgment of a superior court which includes a sentence of death or life imprisonment.²² As pointed out above this is the only type of case which is appealed directly to the supreme court.

(b) A decision of the court of appeals rendered in a case (i) which involves a substantial constitutional question, or (ii) in which there is a dissent or (iii) which involves a decision of the North Carolina Utilities Commission in a general rate making case, except

¹⁶ N.C. GEN. STAT. § 7A-27, 29, 35 (Supp. 1967).

¹⁷ N.C. GEN. STAT. § 7A-27(b) (Supp. 1967).

¹⁸ N.C. GEN. STAT. § 7A-27(c) (Supp. 1967).

¹⁹ N.C. GEN. STAT. § 7A-195, 277 (Supp. 1967).

²⁰ N.C. GEN. STAT. § 7A-29 (Supp. 1967).

²¹ N.C. GEN. STAT. § 7A-27(d) (Supp. 1967).

²² N.C. GEN. STAT. § 7A-27(a) (Supp. 1967).

that *in no event* is there an appeal as a matter of right to the supreme court from a decision of the court of appeals rendered upon review of a post-conviction proceeding.²³

It can be seen from this summary that all appeals to the court of appeals or directly to the supreme court are granted as a matter of right except for those involving post-conviction proceedings. Review of this type of judgment is by writ of certiorari to the court of appeals²⁴ and will be discussed more fully below.

In addition to those cases in which there is an appeal as a matter of right from the court of appeals to the supreme court, the statute provides a "certification" procedure by which the supreme court may review cases upon its own motion or upon motion of the parties.²⁵ Any case in which an appeal is granted as a matter of right to the court of appeals, and in which such appeal has been taken, is subject to certification for review by the supreme court either before or after determination by the court of appeals, except that the statute does require that cases appealed from the Utilities Commission or the Industrial Commission be first determined by the court of appeals. Certification may be made before determination by the court of appeals when in the opinion of the supreme court:

- (1) The subject matter of the appeal has significant public interest, or
- (2) The cause involves legal principles of major significance to the jurisprudence of the state, or
- (3) Delay in final adjudication is likely to result from failure to certify and thereby cause substantial harm, or
- (4) The work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.

The first two criteria would also justify certification after a determination by the court of appeals. Such certification may also be made when in the opinion of the supreme court "the decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court."

Both the supreme court and the court of appeals are specifically

²³ N.C. GEN. STAT. § 7A-30 (Supp. 1967).

²⁴ N.C. GEN. STAT. § 15-222 (Supp. 1967).

²⁵ N.C. GEN. STAT. § 7A-31(a) (Supp. 1967).

vested by the statute with jurisdiction to issue the writ of habeas corpus and with jurisdiction to issue the prerogative writs including mandamus, prohibition, certiorari and supersedeas.²⁶ In the case of the supreme court such writs can be issued in aid of its own jurisdiction or in exercise of its general power to supervise and control the proceedings of any of the other courts of the General Court of Justice. In the case of the court of appeals the writs can be issued to aid its own jurisdiction or to supervise and control the proceedings of any of the trial courts of the General Court of Justice, which would include superior courts and district courts, and of the Utilities Commission and the Industrial Commission. The statute provides that the practice and procedure in the use of such writs shall be as provided by statute or rule of the supreme court.

2. Practice and Procedure.

The supreme court is given the duty by the statute to prescribe the rules of practice and procedure "designed to procure the expeditious and inexpensive disposition of all litigation in the appellate division,"²⁷ and is also authorized to prescribe rules of practice and procedure for the superior and district courts "supplementary to, and not inconsistent with, acts of the General Assembly."²⁸ Such statutory authority is consistent with the provisions of article IV of the constitution which have been previously discussed.

It is important to note that in enacting the amendments to the "Judicial Department Act of 1965" which established the court of appeals, the 1967 General Assembly repealed all of subchapter 1 of chapter 7 of the General Statutes, which had set forth the organization and jurisdiction of the supreme court.²⁹ This subchapter had contained provisions concerning practice and procedure before that court which have not been re-enacted in chapter 7A. Many of the repealed statutes involved procedures which had not been used by the supreme court in practice and in most instances the practice or procedure was covered by the rules of the supreme court.³⁰

²⁶ N.C. GEN. STAT. § 7A-32 (Supp. 1967).

²⁷ N.C. GEN. STAT. § 7A-33 (Supp. 1967).

²⁸ N.C. GEN. STAT. § 7A-34 (Supp. 1967).

²⁹ Ch. 108, § 12, [1967] N.C. SESS. L. 158. The provisions repealed constituted former N.C. GEN. STAT. § 7-1 to -39.15.

³⁰ N.C. GEN. STAT. § 7-13 to -19 (repealed 1967) covered such matters as amendment of process, taking of testimony, proof of exhibits and docu-

It is obviously not sufficient to look only to the statutes pertaining to the appellate division to find the rules and procedure for appeal to the supreme court or to the court of appeals. The method and time for initiating and giving notice of appeal, the form of appeal entries and manner in which exceptions and errors are set out, the procedure and time for making up the record or case on appeal, the appeal bond and many other essential matters of procedure are found in statutes applicable to the particular trial tribunal.³¹ As will be pointed out, the establishment of the court of appeals did not bring about any material change in these statutory procedures except in the case of appeals from the Utilities Commission and Industrial Commission, and except, of course, that all appeals from any trial tribunal, other than appeal from judgments of the superior court imposing death or life imprisonment must be made to the court of appeals rather than to the supreme court. It is somewhat disconcerting that this fundamental change in the case of most trial tribunals is made by implication³² since the statutes still specifically provide for appeal to the supreme court. Until such time as the necessary amendments to reflect the new appellate division are made throughout the General Statutes, it will be imperative to apply the provisions of chapter 7A when referring to any other statutes concerning appeal.

II. RULES OF PRACTICE AND PROCEDURE

The rules of practice and procedure which govern appeals to the appellate division of the General Court of Justice are now found in three distinct sets of rules: The Rules of Practice in the Supreme Court,³³ The Supplementary Rules which govern the hearing of

ments, manner of delivering opinions, certification of opinion to the superior courts, dismissal of appeals, and petition to rehear.

³¹ These specific statutes will be discussed in section III, *infra*. The term "trial tribunal" is defined in N.C. Cr. App. R. 2 to include any judge, court, administrative agency, commission or other body from which an appeal may be taken to the Court of Appeals.

³² N.C. GEN. STAT. § 7A-35(c) specifically provides that on and after October 1, 1967, all causes appealed to the appellate division, other than criminal cases which impose a sentence of death or life imprisonment, shall be filed with the Clerk of the Court of Appeals; ch. 108 [1967] N.C. Sess. L. 158 which enacted this provision contains the usual repealer clause repealing "all other laws and clauses of laws in conflict with this Act."

³³ These rules are published at 254 N.C. 783 (1961), with subsequent amendments appearing at 259 N.C. 753 (1963), 264 N.C. 757 (1965), and 269 N.C. 764 (1967). They are also in vol. 4A of the General Statutes (1955) and the 1967 Cumulative Supplement to that volume.

cases in the supreme court that were originally docketed in the court of appeals,³⁴ and the Rules of Practice in the Court of Appeals.³⁵ Since all appeals to the appellate division must be docketed in the court of appeals, with the one exception of superior court judgments imposing death or life imprisonment, the rules for that court are of paramount importance and should be examined first.

A. Rules of Practice in the Court of Appeals.

Any discussion of the new rules for the court of appeals should begin with the encouraging statement that the rules are for the most part substantially the same as the Rules of Practice in the Supreme Court, and that with few exceptions there should be very little innovation in appellate procedure before the court of appeals. Because of the similarity between the two sets of rules only those rules of the court of appeals in which there is a material change from those of the supreme court will be discussed. The fact that there is no change in a particular rule, however, does not lessen its importance, and it is essential that all of the rules be read and followed in any appeal to the court. It will be helpful, in this connection, to keep in mind that rules 3 and 4 of the court of appeals cover the matters appearing in rules 4 and 4(a) of the supreme court and that the rules of each court correspond as to number and subject matter beginning with rule 5 and continuing through rule 47.

The two most significant differences in the Rules of Practice of the Court of Appeals from those of the supreme court are found in rule 5 which covers the docketing and hearing of appeals and in rule 19 which pertains to the preparation of the record on appeal.

1. Time for Docketing Appeals—Rule 5.

Under rule 5 of the supreme court the time within which appeals must be *docketed* and the time when appeals will be *heard* is dependent upon the time of the entering of the judgment appealed from and its relation to the terms of the supreme court. If the judgment appealed from is rendered before the commencement of a term of the supreme court, the rule requires that the appeal be docketed at such next term at least 28 days before the call of the docket

³⁴ The supplementary rules are published in 271 N.C. 744 (1967).

³⁵ The court of appeals rules are published in the appendix to advance sheet no. 4 of vol. 271 of N.C. Reports and in the 1967 Cumulative Supplement to vol. 4A of the General Statutes.

of the district to which the case belongs. If the judgment appealed from is rendered during a term of the supreme court, it may be docketed either at that term or the next succeeding term; if docketed during the current term at least 28 days before the call of the district, it will be heard at that term; otherwise hearing will be continued to the next term. The requirement for docketing an appeal in the next succeeding term of the supreme court is not applicable to appeals from judgments entered in the month immediately preceding a term in certain specified districts.³⁶

Under rule 5 of the court of appeals the time when an appeal will be *heard* is dependent upon the sessions of the court of appeals in the same manner as the supreme court.³⁷ In order for an appeal to be heard during any session the record on appeal must be docketed at least 28 days before the call of the district. The time within which an appeal must be *docketed*, however, is completely unrelated to the sessions of the court. Under rule 5 the record on appeal must be docketed within 90 days after the date of the judgment appealed from with the provision that the trial tribunal may "for good cause extend the time for a period not exceeding 60 days." Thus under the rule the *maximum* time within which an appeal may be docketed in the court of appeals *under any circumstances* is 150 days after the date of the judgment from which the appeal is taken.

There would appear to be no reason why the time limitation in rule 5 for docketing appeals in the court of appeals should cause any undue difficulty as long as attorneys are aware of its existence and understand that such time period is different from the time allowed for the preparation and serving of a case or counter case on appeal by the parties. These latter time limitations are prescribed by statutes applicable to the particular tribunal from which the appeal is taken, and, as will be pointed out, such statutes in some cases could allow more time for the preparation of the record than the maximum time allowed by rule 5 for docketing the appeal.³⁸ The obvious and simple answer to this possible conflict is to avoid the problem and always make sure that the time limit for preparing the case on appeal allows time for docketing the appeal within the

³⁶ N.C. SUP. CT. R. 5 sets out the districts to which this proviso is applicable.

³⁷ It should be noted that the calendar of the court of appeals is divided into "sessions" rather than "terms" as in the supreme court.

³⁸ These statutes are discussed in section III, *infra*.

limits of rule 5. This problem is not unique to the court of appeals, of course, but has always been a necessary consideration in appealing to the supreme court.³⁹

2. The Record on Appeal—Rule 19.

Rule 19 sets out the requirements for the record on appeal. This rule contains instructions as to the content, arrangement and preparation of the record substantially identical to those in the corresponding supreme court rule of practice, but in addition it prescribes several significant optional methods of making up the record on appeal which have not been available in appellate practice before the supreme court. The new procedures involve (a) alternate methods in which the *evidence* is stated in a case on appeal, and (b) alternate methods by which the *entire record* may be presented to the court.

(a) Stating the Evidence. Under the present supreme court rule the evidence in a record on appeal is required to be set forth in narrative form and not by question and answer, except where a question and answer is the subject of a particular exception.⁴⁰ Rule 19(d) (1) of the court of appeals allows this identical procedure to be used in the preparation of a record on appeal in that court.

As an *alternative* procedure rule 19(d) (2) provides that the appellant may, in lieu of narrating the evidence, file with the clerk of the court of appeals the stenographic transcript of the evidence in the trial tribunal. The transcript is a part of the record on appeal, but is not required to be reproduced. This procedure is quite simple

³⁹ As has been pointed out, N.C. CONST. art. IV, § 11(2) vests *exclusive* authority in the supreme court to make rules of practice and procedure for the appellate division and vests in the General Assembly such authority for the district court and superior court divisions. Where there is an apparent conflict between a statutory procedure and a rule of the court, the question is raised as to what is the precise dividing line between practice in an inferior court and practice in the appellate division. It is believed for practical reasons that after entry and notice of appeal as provided by N.C. GEN. STAT. § 1-280 (1953), the case is governed by appellate procedures and that the rules of the court of appeals and supreme court are paramount. The supreme court, for instance, has consistently held that its rule 5 is mandatory and cannot be set aside by consent or otherwise, *e.g.*, annotation to rule 5 appearing in 254 N.C. 787 (1961). In the case of *In Re Suggs*, 238 N.C. 413, 78 S.E.2d 157 (1953) the court held that allowance of additional time by the trial judge (which is expressly permitted under N.C. GEN. STAT. § 1-282 (1953)), would not excuse failure to docket an appeal within the prescribed time.

⁴⁰ N.C. GEN. SUP. CT. R. 19(4).

and will greatly ease the burden in preparing the record on appeal, but attention should be called to certain requirements which might be overlooked in utilizing the transcript method. In order properly to identify and bring forward exceptions to matters appearing in the testimony it will be necessary to indicate the numbered exception at the appropriate place in the transcript.⁴¹ This could easily be done by inserting, for example, "Appellant's Exception No. 1," directly on the copy of the transcript as prepared by the trial tribunal reporter, at each place where an exception appears. It must also be remembered that the transcript is a part of the record on appeal which must be served on and agreed to by the opposite party prior to its being docketed in the court of appeals.⁴² Rule 19(d) covers the setting forth of *evidence* only; if exception is taken to the charge it will have to be included in that part of the record on appeal to be reproduced.⁴³ In civil actions only one copy of the transcript need be filed, but rule 25 requires that in criminal cases a second copy be filed for use by the Attorney General.

The rule requires that the appellant in an *appendix* to his brief "set out in succinct language with respect to those witnesses whose testimony is deemed to be pertinent to the questions raised on appeal, what he says the testimony of such witness tends to establish with citation to the page of the stenographic transcript in support thereof." If the appellee disagrees as to any portion of such appendix, he is granted the right to set forth in an appendix to his own brief his contentions in like manner. It is pointed out that the rule does not require a verbatim quotation in the appendix of that portion of the transcript which is deemed pertinent to the questions on appeal as in the case of the federal practice before the United States Court of Appeals,⁴⁴ but only the contentions of the parties as to what the evidence in the transcript tends to establish. Apparently, the rule contemplates that the appendix set out a concise summary in narrative form of the facts established by the testimony in the transcript without any argument as to how such evidence tends to support the exceptions and assignments of error, and that in arguing the application of the facts in the body of the brief citation be made

⁴¹ N.C. CT. APP. R. 19(c) and 21 relate to exceptions.

⁴² N.C. CT. APP. R. 19(d)(2) provides that the transcript is to be "agreed to by the opposite party or . . . settled by the trial tribunal."

⁴³ N.C. CT. APP. R. 19(a).

⁴⁴ *E.g.*, 4TH CIR. R. 2(e), 4(e) and 5.

to the summary of facts as contained in the appendix rather than directly to the transcript. When the transcript method of bringing forward the evidence is used in a record on appeal, the appendix to the brief is the required manner of directing the court's attention to the pertinent evidence and is an essential part of the brief.

The choice between the narration method and the transcript method of bringing forward evidence authorized by rule 19 will depend, of course, upon the nature of the case and the type of factual situation and evidence involved. Although there will be cases where a narration of the evidence would better serve to present the facts to the court, it would appear that in the case of most appeals the use of the transcript will prove to be a less burdensome and more economical method.⁴⁵

(b) *Alternate Types of Presenting the Record on Appeal.* Rule 19(e) allows the parties to agree to a "statement of the case" in lieu of sending forward all of the pleadings, evidence and proceedings in the trial tribunal which would normally be contained in a record on appeal. Certain matters are required by the rule to be included in the agreed statement of case—an explanation of how the questions presented by the appeal arose and were decided in the trial tribunal, so many of the facts as are essential to a decision of the questions by the appellate court, a copy of the judgment appealed from and a concise statement of the points to be relied upon by the appellant. The parties may also include "or have annexed" to the statement such portions of the transcript of testimony as they may desire and a description of such portions of the "original record" which they desire to have sent up. In utilizing this procedure it is important to know that the agreed statement must be submitted to the *trial tribunal* within twenty days of the filing of the notice of appeal and that it must be approved by the trial tribunal before it will constitute the record on appeal in the court of appeals. The provisions of rule 19(e) should prove to be a useful alternate in preparing the record on appeal where the nature of the case is such that the questions on appeal can be more clearly presented by a concise explanation of the proceedings below rather than by the record itself.

⁴⁵ The mimeographing fee of \$1.60 per page charged by the clerk of the court of appeals for reproducing records and briefs makes economic consideration an important factor since the elimination of a narrative of evidence in the record will in many cases materially reduce the printed record.

Rule 19(f) provides a method by which the record on appeal is to be prepared where there was no stenographic record of the evidence or proceedings before the trial tribunal. This rule involves essentially a statement of the case agreed upon by the parties and approved by the trial tribunal. The relatively short time limits for preparing the statement and serving it on the opposite party and presenting it to the trial tribunal for settlement and approval should not be overlooked.⁴⁶ It is also important to note that this rule does not provide that the approved statement of the case will constitute the entire record on appeal but that it will be "included in" the record on appeal. Consequently, the judgment and any other pleadings or documents on which the case was heard should be included as a separate part of the record on appeal in addition to the statement. There would appear to be no reason, however, why the provisions of rule 19(f) and those of 19(e) discussed above could not be used in the same case; in fact, it is likely that cases of the kind which would be heard in chambers without a reporter would be those in which the agreed statement of case in lieu of record allowed by rule 19(e) would be the most appropriate.

Rule 19(g) recognizes the special procedure required by N.C. GEN. STAT. §§ 110-40 and 7A-195 for the findings of fact and summary of evidence in juvenile cases.

3. Other Changes in the Rules.

The rules and practice in the court of appeals contain other changes from those of the supreme court which are minor in nature and which should not cause any difficulty to the attorney as long as he reads the rules.

It will be necessary, of course, to become familiar with rule 7 of the court which provides for the call of the judicial districts. This call does *not* correspond with the call of judicial districts for cases to be heard in the supreme court. A major innovation provided by rule 7 is the fact that during the spring session there will be a second call of the districts for hearing those appeals which had been docketed too late for the first call of the district but at

⁴⁶ The appellant has ten days after filing notice of appeal to prepare the statement, the appellee ten days thereafter to serve any objection, and the appellant ten days after such service to deliver the statement to the trial tribunal for settlement and approval—a total of only thirty days.

least twenty-eight days before the second call. The call of the calendar for the court of appeals for each session of the court will be published by the clerk and included as a supplement to the advance sheets in the same manner as that of the supreme court.

A second major innovation is the manner in which the cases will be heard on oral argument by the court. Under the provisions of N.C. GEN. STAT. § 7A-16 (Supp. 1967) the court of appeals is to sit in panels of three judges each. Rule 45 provides that one panel of the Court will sit daily during each session from 9:30 to 12:30 p.m. and another panel from 1 p.m. to 4 p.m. for the hearing of the cases.

B. Supplementary Rules of the Supreme Court

The establishment of the court of appeals necessitated that the supreme court promulgate supplementary rules to provide procedures governing the hearing by that court of cases originally docketed in the court of appeals. Since *all* appeals coming to the appellate division, other than superior court judgments imposing death or life imprisonment, must be originally docketed in the court of appeals, these supplementary rules are of utmost importance.

Rule 1 of the supplementary rules provides the procedure by which a case docketed in the court of appeals may be certified for appellate review by the supreme court before its determination by the court of appeals. This rule is based on the provisions of N.C. GEN. STAT. § 7A-31(b) (Supp. 1967) which has been discussed above.⁴⁷ If the case falls within the first three criteria of that statutory provision any party may file a petition for writ of certiorari in the supreme court within fifteen days after the cause is docketed in the court of appeals. Such petitions are subject to all of the requirements of rule 34 of the supreme court except as to the time for filing. This latter rule contains the requirements for seeking the writ of certiorari before the supreme court and requires a verified petition specifying the grounds and ten days notice to the adverse party who is granted the right to answer the petition. Under rule 1 the supreme court, under its own motion and in accordance

⁴⁷ See section I, B, *infra*. The first case to be certified for review by the North Carolina Supreme Court under the provisions of this statute and N.C. SUP. CR. R. 1 was *Mitchell v. North Carolina Indus. Dev. Fin. Auth.*, 273 N.C. 137, 159 S.E.2d 745 (1968), which involved the constitutionality of portions of the North Carolina Industrial Development Financing Act, N.C. GEN. STAT. § 123A-1 to -27 (Supp. 1967).

with "a memorandum of procedure" issued by the supreme court, may also certify such cases when they fall within the criteria set forth in N.C. GEN. STAT. § 7A-31(b) (Supp. 1967). In accordance with the statute rule 1 does not apply to appeals from the Utilities Commission or Industrial Commission or post-conviction proceedings.⁴⁸

Rule 2 of the supplementary rules provides the procedure by which cases determined by the court of appeals may be certified for further appellate review by the supreme court under the provisions of N.C. GEN. STAT. § 7A-31(c) (Supp. 1967).⁴⁹ Where the case falls within any of the criteria set out in that statutory provision, any party to the case may file petition for writ of certiorari within fifteen days after the date of the certification to the trial tribunal of the determination of the court of appeals.⁵⁰ As in the case of petitions filed under rule 1, all of the requirements of rule 34 of the supreme court will be applicable to such petitions with the exception of the time of its filing. Interlocutory determinations made by the court of appeals in cases falling within rule 2 will be certified for review by the supreme court only upon a determination by that Court that "failure to certify would cause a delay in final adjudication which would probably result in substantial harm."

Rule 2 contains similar provisions to those in rule 1 as to certification by the supreme court upon its own motion. The rule is specifically made inapplicable to post-conviction proceedings.

As has been discussed, there are certain classifications of cases where parties are granted an appeal as a matter of right to the supreme court from decisions of the court of appeals.⁵¹ Rule 3 of the supplementary rules applies in such a case and provides that when such an appeal is taken to the supreme court, the appealing party must give written notice of appeal to the clerk of the court of appeals, to the clerk of the supreme court and to the opposing parties within

⁴⁸ N.C. GEN. STAT. § 7A-31(a) (Supp. 1967).

⁴⁹ See section I, B, *infra*.

⁵⁰ N.C. CT. APP. R. 38 requires certification of decisions of the court to be transmitted to the trial tribunal on the second Monday after the written opinions of the court are filed in his office, unless the court orders an earlier certification. The call of calendar in the court of appeals, issued by its clerk, sets out the dates on which opinions are to be filed during each session. The calendar for the Spring 1968 Session shows all opinion days as falling on a Wednesday, as is the practice in the supreme court.

⁵¹ N.C. GEN. STAT. § 7A-30 (Supp. 1967).

fifteen days from the date of the certificate of the clerk of the court of appeals to the trial tribunal.⁵²

When a case is docketed in the supreme court for review either before or after determination by the court of appeals, whether under supplementary rule 1 or 2 or as a matter of right under N.C. GEN. STAT. § 7A-30 (Supp. 1967), the record on appeal would necessarily have already been prepared and docketed with the court of appeals. Rule 5 of the supplementary rules provides that such record will constitute the record on appeal for the purposes of the supreme court review, provided that the record complies with the rules of the court of appeals. Twelve copies of the record on appeal must be filed in the office of the clerk of the supreme court in any such case.

Strict attention must be paid to the supplementary rules governing the filing of briefs where a case originally docketed in the court of appeals is reviewed by the supreme court. If a case is certified to the supreme court before determination by the court of appeals, the briefs of the parties may or may not have already been filed with the court of appeals.⁵³ If briefs have been filed, twelve copies would be filed with the clerk of the supreme court along with the twelve copies of the record on appeal.⁵⁴ If the briefs have not been filed, it is necessary that they be filed *within the time prescribed by the rules of the court of appeals*, unless the supreme court orders otherwise,⁵⁵ and twelve copies of the brief must be filed with the clerk of the supreme court and the remaining number required by rule 27 of the court of appeals must be filed with the clerk of the court of appeals.⁵⁶ Under the present practice of having the records on appeal and briefs printed under the supervision of the clerk as allowed by rule 23, compliance with the brief-filing requirements of the supplementary rules in this situation should not be difficult as long as the original brief, together with the proper deposit, is filed with the clerk of the supreme court within the time limits in which such briefs would have been required to be filed with the clerk of the court of appeals had the case not been transferred.

⁵² See *supra* note 50.

⁵³ The time for filing briefs before the court of appeals is related to the call of the district as is the case in the supreme court. N.C. CT. APP. R. 28, 29; N.C. SUP. CT. R. 28, 29.

⁵⁴ N.C. SUP. CT. (Supp.) R. 6, 271 N.C. 746 (1967).

⁵⁵ N.C. SUP. CT. (Supp.) R. 11, 271 N.C. 748 (1967), specifically provides that removal of a cause to the supreme court from the court of appeals does not extend to the time for filing briefs.

⁵⁶ N.C. SUP. CT. (Supp.) R. 6, 271 N.C. 746 (1967).

Where a case is docketed in the supreme court for the review of the determination made by the court of appeals, either as a result of certification under supplementary rule 1 or on appeal as a matter of right under N.C. GEN. STAT. § 7A-30 (Supp. 1967), twelve copies of the briefs filed by the parties in the court of appeals must be filed with the clerk of the supreme court along with twelve copies of the record on appeal.⁵⁷ The parties must also file a new or supplementary brief dealing with the questions sought to be reviewed by the supreme court.⁵⁸ The brief of the party seeking the review must be filed within fourteen days from the date the case was docketed in the supreme court, and the brief of the opposing party must be filed within twenty-one days of such docketing.⁵⁹

The setting of the hearing on cases docketed in the supreme court from the court of appeals is governed by supplementary rules 9 and 10, with the clerk of the supreme court being required to give all counsel of record twenty days notice of the time set for hearing.⁶⁰

C. Rules of Practice in the Supreme Court

It is apparent, with the exception of appeals from superior court judgments imposing death or life imprisonment, that the rules of practice in the supreme court have to a great extent been supplanted by the those of court of appeals and the supplementary rules. The supreme court rules remain in full force otherwise and must, of course, be strictly followed in any case coming before that court.

III. APPELLATE PROCEDURES APPLICABLE TO PARTICULAR TRIAL TRIBUNALS

As has been indicated, the source of much appellate procedure is found in statutes applicable to the individual trial tribunals. With few exceptions, the General Assembly in establishing the court of appeals did not specifically amend such statutory provisions to reflect the new system of appeals, and the provisions of chapter 7A must be applied to those statutes. In most instances, however, the new appellate procedure does not necessitate any change in such statutes, and the practice will remain the same as it was before the existence of the court of appeals. Not to be forgotten is the fact that

⁵⁷ *Id.*

⁵⁸ N.C. SUP. CT. (Supp.) R. 8, 271 N.C. 747 (1967).

⁵⁹ *Id.*

⁶⁰ N.C. SUP. CT. (Supp.) R. 12, 271 N.C. 748 (1967).

the constitution vests in the supreme court the *exclusive* authority to make rules of procedure and practice for the appellate division⁶¹ and that the rules of practice in the court of appeals and the supreme court must always be consulted in any procedure involving appeal to those courts.

A. Appeals from the Superior Court Division

All appeals in both civil and criminal cases from the superior courts, except those from judgments imposing death or life imprisonment, must be made to the court of appeals.⁶² With this basic change in mind—plus the innovations in rule 5 and rule 19 of the court of appeals—the appellate procedure from the superior court division should present no new problems to the attorney.

1. Civil Appeals.

The provisions of article 27 of chapter 1 of the General Statutes continue to be applicable to appeals from the superior courts in civil cases.⁶³ The basic provision providing for such appeals is found in N.C. GEN. STAT. § 1-277 (1953), and the annotations to supreme court decisions interpreting this section will continue to serve as a valuable guide to appeals to the court of appeals. The requirements of N.C. GEN. STAT. §§ 1-279 and 1-280 (1953) as to the time within which appeals must be taken and notice of appeal are, of course, essential and strict compliance with these provisions will be necessary to invoke the jurisdiction of the court of appeals over the appeal.⁶⁴

It is with the provisions of N.C. GEN. STAT. §§ 1-282 and 1-283 (1953) which govern preparation, service and settlement of the case on appeal⁶⁵ that care must be taken to avoid problems in meeting the time limits prescribed by rule 5 of the court of appeals in

⁶¹ N.C. CONST. art. IV, § 11.

⁶² N.C. GEN. STAT. § 7A-27, -35 (Supp. 1967).

⁶³ This article comprises N.C. GEN. STAT. § 1-268 to -301 (1953), as amended (Supp. 1967).

⁶⁴ *Oliver v. Williams*, 266 N.C. 601, 146 S.E.2d 648 (1966).

⁶⁵ The "case on appeal" within the meaning of these statutory provisions is only a part of the "record on appeal" required to be docketed in the appellate court. These sections provide that such "case on appeal," when agreed upon between the parties or settled by the trial judge, is to be delivered to the clerk of superior court to be attached to the record or transcript of the case prepared by the clerk. Actual practice in most counties, however, is for the appellant to prepare the entire record on appeal which, when agreed upon by the appellee, is taken to the clerk for certification after which the appellant docketes the record on appeal with the clerk of the appellate court.

docketing the record on appeal. The customary practice is for the trial judge to set the time for serving the case and counter case on appeal in the appeal entries to the judgment. This time must now be allotted so that the appellant will be able to docket the record within 90 days after the date of entry of the judgment appealed from. If the parties do not agree as to the case on appeal and it is necessary that it be settled by the trial judge, it would seem reasonable to assume that such situation would constitute "good cause" for the appellant's requesting and obtaining an extension of time under rule 5 within which to docket the appeal. In some cases it could be apparent at the time of making the appeal entries that preparation of the transcript and record could take an undue length of time or that for some other "good cause" a period in excess of 90 days from the date of the judgment for docketing the record on appeal with the court would be necessary. The trial judge, in such case, could presumably include in the appeal entries the appropriate provisions extending the docketing period within the limits allowed by rule 5. The distinction between the time limits for serving the case on appeal and docketing the record on appeal is important not only to the appellant, but to the appellee in the event that the appellant fails to meet either deadline. If the case on appeal is not served within the time allowed, the appellee may file motion in the superior court under N.C. GEN. STAT. § 1-287.1 (1953) for dismissal of the appeal. If the case is properly served but not docketed in the court of appeals within the time allowed by rule 5, the appellee should file motion to dismiss under rules 5 and 17 of the court of appeals. It is important to note that this latter motion must be filed with the court of appeals before the record on appeal is actually docketed.

Under the provisions of N.C. GEN. STAT. § 7A-250 (Supp. 1967) the superior court division is designated as the proper division for review of orders and decisions of administrative agencies except for those from the Utilities Commission and the Industrial Commission. Appeals from the superior courts to the court of appeals from judgments of this type are subject, of course, to the same statutes and procedures applicable to any civil appeal.⁶⁶ Since the superior court,

⁶⁶ Such cases would include appeals from administrative agencies such as the Tax Review Board, Commissioner of Motor Vehicles and State Banking Commission, for example, under the provisions of N.C. GEN. STAT. § 143-306 to -316 (1964); appeals from licensing boards under the provisions of N.C. GEN. STAT. § 150-1 to -34 (1964); and appeals from commissions

however, in most cases of this kind is exercising appellate jurisdiction with a limited scope of review, special attention should be given to the manner in which exceptions and errors are set out to the order or decision of the administrative agency, the type of record upon which the case is heard in the superior court, and the form of judgment entered by the superior court. These considerations are necessary in order to prepare a proper record on appeal to the court of appeals that will assure a determination of all of the questions desired to be presented to that court.

Other provisions of article 27 of chapter 1 would appear to present no difficulties in appellate practice before the court of appeals.

2. Criminal Appeals.

Appeals from judgments rendered in criminal cases by the superior courts are governed by article 18 of chapter 15 of the General Statutes.⁶⁷ Where such judgments impose death or life imprisonment, the appeal will lie directly to the supreme court.⁶⁸ In all other criminal appeals, except post-conviction proceedings, appeal will lie to the court of appeals.⁶⁹ Under the provisions of N.C. GEN. STAT. § 15-180 (1965) the procedure for giving notice of appeal and perfecting the appeal in criminal cases is the same as that provided in civil actions, and the comments which have been made in connection with civil appeals from the superior court are equally applicable to criminal appeals. Attention must be paid to the rules of the court of appeals applying to criminal cases, particularly rule 25 which by reference incorporates the corresponding rule of the supreme court requiring that two copies of the record on appeal be filed with the clerk in any criminal action.

It has been pointed out earlier that the only type of appeal to the court of appeals from any tribunal that is not granted as a matter of right is appeal from a judgment of the superior court entered upon a petition filed in a post-conviction proceeding under article 22 of chapter 15 of the General Statutes.⁷⁰ This article, known as the

or agencies which have their own statutory appeal procedures for review in the superior courts such as the Commissioner of Insurance in N.C. GEN. STAT. § 58-9.3 (1965).

⁶⁷ This article comprises N.C. GEN. STAT. § 15-177 to -186 (1965), as amended (Supp. 1967).

⁶⁸ N.C. GEN. STAT. § 7A-27(a) (Supp. 1967).

⁶⁹ N.C. GEN. STAT. § 7A-27(b) (Supp. 1967).

⁷⁰ N.C. GEN. STAT. § 7A-28 (Supp. 1967).

"Post-Conviction Hearing Act,"⁷¹ provides for review of the superior court judgment in such proceedings upon application by the petitioner or by the state for writ of certiorari brought within sixty days from the entry of the judgment.⁷² The petition must be prepared in strict compliance with rule 34 of the rules of the court of appeals and is, of course, different in form but must contain much of the same record as would be included in a record on appeal. If the writ is granted it may be necessary to file a subsequent record on appeal as in a regular criminal appeal.⁷³

B. Appeals from the District Court Division

All appeals from civil judgments of the district courts and any type of judgment from the district court arising out of cases involving juveniles under article 2 of chapter 110 of the General Statutes must be made to the court of appeals.⁷⁴ Under N.C. GEN. STAT. § 7A-193 (Supp. 1967) the civil procedure provided in chapter 1 of the General Statutes is made applicable to the district court division, and the statute specifically provides that where there is a reference in that chapter to the superior court that it "shall be deemed to refer also to the district court in respect of causes in the district court division." This means, of course, that article 27 of chapter 1, when read in light of chapter 7A and the rules of practice of the court of appeals, govern civil appeals from the district courts in precisely the same manner as civil appeals from the superior court.

The only special consideration needed to be given to the district court appellate procedure is to cases involving juveniles. N.C. GEN. STAT. § 7A-277 (Supp. 1967) grants to the district court division exclusive, original jurisdiction over cases "involving juveniles, as such jurisdiction is set forth in chapter 110, article 2 of the General Statutes."⁷⁵ This article provides for special procedures in the determination of matters arising out of the care, custody and conduct of juveniles, and N.C. GEN. STAT. § 110-40 (1966) sets forth specific procedures governing appeals from such cases and the manner in which the record on appeal is to be prepared.

⁷¹ N.C. GEN. STAT. § 15-217 to -222 (1965), as amended (Supp. 1967).

⁷² N.C. GEN. STAT. § 15-222 (Supp. 1967).

⁷³ Brown, *Post Conviction Hearings*, 15 THE N.C. BAR 7 (1968), contains excellent suggestions as to preparation of the writ of certiorari in these proceedings.

⁷⁴ N.C. GEN. STAT. § 7A-27(c), -195 (Supp. 1967).

⁷⁵ This article comprises N.C. GEN. STAT. § 110-21 to -44 (1966), as amended (Supp. 1967).

There is no appeal from a judgment in a regular criminal action rendered in the district courts to the appellate division since all such cases must be appealed to the superior court division.⁷⁶

*C. Appeals from the Utilities Commission and
Industrial Commission*

Appeals from the North Carolina Industrial Commission and the North Carolina Utilities Commission lie directly to the court of appeals.⁷⁷ This is a substantial departure from the former law which provided for review of decisions of these commissions by the superior court,⁷⁸ and a complete rewriting of the statutes governing such appeals was necessary. Except for a few instances, the appellate procedure under the statutes as rewritten will be substantially the same as that of an appeal in a civil action from the superior court.⁷⁹

1. Industrial Commission.

Appeals from the Industrial Commission are covered by N.C. GEN. STAT. § 97-86 (1965) in cases under the workmen's compensation act and by N.C. GEN. STAT. § 143-293 (1964) in cases arising out of the tort claims act. These statutes are substantially identical as to procedure for appealing to the court of appeals. An appeal from a decision of the commission may be made by either party within thirty days after the date of the decision or within thirty days after the receipt of notice by registered or certified mail of such decision "under the same terms and conditions as govern appeals to the Court of Appeals in ordinary civil actions." The statutes set out the manner and time within which the statement of the case is to be served and

⁷⁶ N.C. GEN. STAT. § 7A-288 (Supp. 1967).

⁷⁷ N.C. GEN. STAT. § 7A-29 (Supp. 1967).

⁷⁸ Utilities Commission appeals to the superior court were provided for by ch. 1207 [1955] N.C. Sess. L.; Industrial Commission appeals to the superior court were provided by N.C. GEN. STAT. Ch. 1058 [1951] N.C. Sess. L. and ch. 120 [1929] N.C. Sess. L. These sections were supplanted in 1967.

⁷⁹ The statutes applying to both the Utilities Commission and the Industrial Commission provide that the appellant shall cause to be prepared a "statement of the case as required by the rules of the Court of Appeals." N.C. GEN. STAT. §§ 62-90, 97-86 and 143-293 (Supp. 1967). Actually, the rules of the court of appeals do not use the term "statement of the case" except in rule 19(e) which allows the parties to agree to a "statement of the case" in lieu of the regular record on appeal. It is believed that what these statutes refer to is a "statement of the case" as that term is used in N.C. GEN. STAT. § 1-282 (1953). In this connection see *supra* note 63.

settled, following the same procedure set forth in N.C. GEN. STAT. §§ 1-282 and -283 (1953) except for the substitution of the Chairman of the Industrial Commission for the trial judge and except that the initial time limits allowed are increased. The time limitations provided in the statutes would provide more time for settling the record than the time allowed by rule 5 within which to docket the appeal in the court of appeals. Consequently, the same precautions as to complying with rule 5 in connection with superior court appeals must be heeded in appeals from the Industrial Commission.

The procedures provided by N.C. GEN. STAT. § 97-86 (1965) and N.C. GEN. STAT. § 143-293 (1964) do not specifically set forth the manner as to how notice of appeal or entry of appeal is to be made; both of these matters are essential under N.C. GEN. STAT. § 1-280 (1953) which is apparently incorporated by reference into the statute. Notice of the appeal will have to be given to opposing parties and the commission, preferably by registered or certified mail or some other type of service. This notice should also set out the exceptions to the commission's decision, and when received by the commission would constitute the appeal entry when filed in the docket. If it is necessary to request of the chairman an extension of the time within which to prepare and serve the record under the statutes or additional time within which to docket the appeal under rule 5, it will be necessary that appropriate orders be entered by the chairman.

Under the prior law the clerk of the commission was required to furnish a certified transcript of the record for filing in the superior court and such transcript constituted the "record on appeal" to that court.⁸⁰ It will now be necessary that all of the requirements of the rules of the court of appeals as to the preparation of the record on appeal be strictly followed as in any case. All of the alternative methods for preparing the record on appeal and setting out the evidence in such record will, of course, be available to appeals from the Industrial Commission. The flexibility in preparing the record on appeal afforded by the new rules should greatly simplify the problems which may be involved in adjusting the practice and procedure for the commission to provide for the direct appeal to the court of appeals.

⁸⁰ Ch. 1059 [1951] N.C. Sess. L.; ch. 120 [1929] N.C. Sess. L.

2. Utilities Commission.

The statutory provisions governing appeals from the North Carolina Utilities Commission are set forth in N.C. GEN. STAT. §§ 62-90, 91, and 92 (Supp. 1967). These provisions do not expressly provide that appeals from the Utilities Commission will be subject to the same terms and conditions as ordinary appeals as do the statutes covering appeals from the Industrial Commission, but the procedures set out are substantially the same. Here again the statute would allow more time for preparing and settling the record than rule 5 allows for docketing the appeal, and the necessary precautions which have been discussed in this connection must not be overlooked in appeals from the Utilities Commission.

It is noted that N.C. GEN. STAT. § 62-90 (Supp. 1967) vests the authority to enlarge the time limitation in preparing and serving the record in the commission rather than in its chairman as in the case of the Industrial Commission. Presumably, however, the Chairman of the Utilities Commission has the authority to act for the commission in this respect under the provisions of N.C. GEN. STAT. § 62-13 (1965).⁸¹ Upon failure of the parties to agree to the record the statute contains a somewhat unusual provision that would require the chief judge of the court of appeals to appoint a referee to sign and settle the case.⁸²

N.C. GEN. STAT. § 62-90 (Supp. 1967) is explicit in setting out the time for appealing from orders of the Utilities Commission, the form of notice of appeal,⁸³ and the manner of giving notice of such appeal to the Commission and the other parties. This procedure is the same as that used under the prior law in giving notice of appeal to the supreme court. The notice of appeal and exceptions required by the statute would serve as the equivalent of appeal entries when filed with the Commission.

As in the case of the Industrial Commission preparing the record on appeal under N.C. GEN. STAT. § 62-90 (Supp. 1967) will neces-

⁸¹ This provision vests in the chairman the authority to hear and determine procedural matters not determinative of the merits of the controversy.

⁸² N.C. GEN. STAT. § 62-90(f) (Supp. 1967).

⁸³ The notice must set forth specifically "the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission."

sitate strict compliance with the rules of practice of the court of appeals.

IV. CONCLUSION

The advent of the court of appeals will not require any major innovations in appellate procedure in North Carolina, and attorneys who have gained proficiency in practice before the supreme court will experience no problem in adjusting to the new appellate system. The rules of practice of the court of appeals are precise and relatively simple to understand, and at the present time there is no reason to believe that they will be interpreted by that court in any way substantially different from supreme court practice. No doubt, however, there will be many attorneys who will ignore, overlook misinterpret, or somehow fail to comply with the new rules, and the court of appeals in admonishing them for their mistakes will gradually build up its own case law in interpreting the rules. It is hoped that this outline will enable the reader to assure that such decisions will involve cases other than his own.